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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/506,979	09/08/2004	Alain Delache	BONN-120	6948
32954	7590	12/28/2005		
JAMES C. LYDON 100 DAINGERFIELD ROAD SUITE 100 ALEXANDRIA, VA 22314			EXAMINER PATEL, NIHIR B	
			ART UNIT	PAPER NUMBER
			3743	

DATE MAILED: 12/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/506,979

Applicant(s)

DELACHE ET AL.

Examiner

Nihir Patel

Art Unit

3743

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on October 17<sup>th</sup>, 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☐ Claim(s) \_\_\_\_\_ is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 9-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Response to Arguments*

Applicant's arguments with respect to claims 9 through 17 have been considered but are moot in view of the new ground(s) of rejection.

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claim 9 through 17 are rejected under 35 U.S.C. 102(e) as being anticipated by Matthews et al. (US 2004/0187870) based on provisional filing date of October 12<sup>th</sup>, 2001.

Referring to claim 9, Matthews discloses an apparatus that comprises a blower 40 (see figure 1 and page 3 paragraph [0054]) to provide the patient with air under a treatment pressure, a control unit 106 (see figure 2 and page 5 paragraph [0077]) to adjust the pressure delivered by the blower at the level of the mask, a ramp module (see figure 2 and page 6 paragraph [0080]) connected to the control unit in order to provide the control unit with a value of pressure  $P_M$  to settle at the mask, so that when the apparatus starts functioning, the pressure progressively rises until the pressure of treatment  $P_T$ , the rise of pressure until the pressure of treatment  $P_T$  corresponding to a ramp period (see page 7 paragraph [0096]); and a comparator (see page 7 paragraph [0094]) connected to the ramp module, at least one means for detecting the patient's breathing parameters during the ramp period and sending them to the comparator such that the

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comparator is able during this ramp period to determine whether an event occurs in patient's breathing based on the breathing parameters and to send the corresponding data to the ramp module which provides the control unit with a value of pressure  $P_M$  that will speed up with respect of time during this ramp period, so that the rise of pressure at patient's mask is accelerated within the same ramp period.

**Referring to claim 10**, Matthews discloses an apparatus wherein the ramp module provides the value of pressure being a linear function of time wherein an increase coefficient is constant, the ramp module increasing that coefficient of a constant value When the control unit sends a data corresponding to the event.

**Referring to claim 11**, Matthews discloses an apparatus wherein the value of pressure has always maximum and/or minimum limits so that the increase of pressure is also limited in minimum and/or maximum (see page 7 paragraph [0096]).

**Referring to claim 12**, Matthews discloses an apparatus wherein the ramp module comprises a memory where a minimum coefficient ( $K_{srp}$ ) is stored, the ramp module always maintaining the coefficient ( $K_{srp}$ ) equal or greater than the minimum coefficient ( $K_{srp}$ ), so that the ramp module provides the control unit with a value of pressure ( $P_m$ ) always greater than a minimum limit.

**Referring to claim 13**, Matthews discloses an apparatus wherein the ramp module comprises a memory where a maximum coefficient ( $K_{mrp}$ ) is stored, the ramp module always maintaining the coefficient ( $K_{rp}$ ) equal or less than the maximum coefficient ( $K_{mrp}$ ), so that the ramp module provides the control unit with a value of pressure ( $P_m$ ) always less than a maximum limit.

**Referring to claim 14**, Matthews discloses an apparatus wherein the means for detecting the patient's breathing parameters enable the control unit to compute the air flow at patient's mask, the comparator determining whether an event is occurring with the airflow parameter or shape.

**Referring to claim 15**, Matthews discloses an apparatus wherein the ramp module increases the value of pressure (Pm) when an anomaly in patient's breathing is detected.

**Referring to claim 16**, Matthews discloses an apparatus wherein the anomaly is either snoring or apnea.

**Referring to claim 17**, Matthews discloses an apparatus wherein the ramp module increases the value of pressure (Pm) when the patient's breathing and asleep breathing or when they correspond to a stable frequency of breathing.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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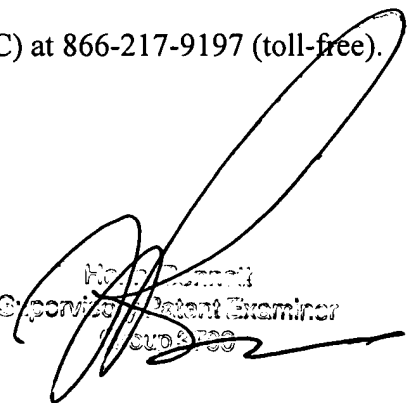
however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nihir Patel whose telephone number is (571) 272-4803. The examiner can normally be reached on 7:30 to 4:30 every other Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Bennett can be reached on (571) 272-4791. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Nihir Patel  
December 20<sup>th</sup>, 2005

  
Henry Bennett  
Supervising Patent Examiner  
(571) 272-4791